

### **Remarks**

This paper responds to the final Office Action of January 17, 2007. Entry and reconsideration are requested.

Initially, it is noted that the Office Action Summary indicates that all of the claims, including claim 35, stand rejected, while the Detailed Action omits claim 35 from the list of rejected claims. Clarification is requested, but the following comments regard claim 35 as if it stands rejected.

#### **Rejection under 35 U.S.C. § 103**

Claims 1, 3-13, 26, 29, 32, 33 and 34 were rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent 6,019,745 ("Gray") as modified by U.S. Patent 6,089,455 ("Yagita"). Applicant disagrees for at least the following reasons.

All of the independent claims 1, 12, 26, 29, and 35 are directed, in part, to at least two recognition elements arranged in at least one of two predetermined configurations . . . wherein the at least two configurations are different from each other, wherein each predetermined configuration comprises a number of available positions for the recognition elements, wherein the angular distance between any two positions is different than the angular distance between any other two positions.

Gray discloses a medical syringe with a data carrier means mounted near the end of each finger grip projection. Alternatively, the data carrier means is a circumferential magnetic ink bar code on a syringe label. Gray, however, does not disclose at least two recognition elements arranged in at least two predetermined configurations. Gray only discloses one arrangement of its data carrier means for a given embodiment and does not disclose "a number of available positions." Where the data carrier means is mounted near the end of each finger grip projection, only two positions of aerial coils are shown. No other configuration is explicitly disclosed or suggested. Where the data carrier means is a magnetic ink bar code, a specific number of ink bars are shown with no predetermined additional positions on the syringe to provide for different configurations.

Yagita fails to remedy the disclosure deficiencies of Gray, because Yagita also fails to disclose or teach “at least two configurations with a number of available positions.” Yagita discloses printing a mark in each of five divided areas: A, B, C, D, and E. The five divided areas as a group define one configuration. Yagita does not disclose other available areas for marks in addition to the occupied areas. Thus, Yagita does not disclose “at least two predetermined configurations, said configurations being different from each other, wherein each predetermined configuration comprises a number of available positions.” Additionally, Yagita does not disclose or teach anything about providing an “angular distance” between any two positions that is different than the angular distance between any other two positions. As can be seen in Figure 7 of Yagita, the angular distance between mark M1 and X1-A1 is the same as the angle between mark M2 and X1-A1. Thus, the angular distance between M1 and X1-A1 is not “different than the angular distance between any other two positions” as claimed in the present application.

The recited feature of at least two different configurations with a number of available positions, which is not taught by either patent or the asserted combination, is advantageous because it allows for the same or similar ampoules to contain different substances and still be recognized and differentiated by an administering device. Specification, p. 2 ll. 10-14.

The recited feature of different angular distances between any two positions, which is not disclosed or taught by Yagita, allows for recognition and differentiation of ampoules whether the recognition elements fall on the same concentric circle or not. For example, assume an ampoule comprises three available positions, P1, P2, and P3 for recognition elements. Further, assume the angular distance between P1 and P2 is 90 degrees, and the angular distance between P2 and P3 is 90 degrees. Finally, assume all of the available positions fall on the same concentric circle. Where the recognition elements are located at P1 and P2, the administering device may not be able to tell the difference between that orientation and the situation where recognition elements are located at positions P2 and P3. Thus, while recognition elements can be placed at varying distances from the center, an additional defense against error or failure to properly differentiate ampoules is provided by providing that no angular distance between two positions is the same.

Neither Gray or Yagita, alone or in combination, disclose, suggest, or provide any motivation for success of including at least two recognition elements arranged in at least one of

two predetermined configurations . . . wherein the at least two configurations are different from each other, wherein each predetermined configuration comprises a number of available positions for the recognition elements, and wherein the angular distance between any two positions is different than the angular distance between any other two positions.

Claims, 3-11, 13, and 32-34 depend directly or indirectly from independent claims 1, 12, 26, 29, and 35 and add additional recitations. Thus, they are patentable for at least the same reasons as the independent claims.

Reconsideration and withdrawal of the rejection are requested.

Conclusion

This response is being submitted on or before July 17, 2007 with the required fee of \$1,020.00 for a three-month extension of time, making this a timely response. It is believed that no additional fees are due in connection with this filing. However, the Commissioner is authorized to charge any additional fees, including extension fees or other relief which may be required, or credit any overpayment and notify us of same, to Deposit Account No. 04-1420.

The application is in allowable form and entry, reconsideration and allowance are requested.

Respectfully submitted,

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